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Jennifer J. Johnson
Secretary of the Board
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. N.W.
Washington, D.C. 20551

Re: Docket Nos. R-1 167, R-1168, R-1169, R-1170, R-1171

Dear Ms. Johnson:

We are writing to comment on the proposed extension of Regulation P standards regarding “clear and conspicuous” disclosures to those disclosures required by Regulations B, DD, E, M, and Z; to raise concerns about the Board’s proposed rule of construction interpreting references to “amount” in Regulation Z; and to respond to the Board’s request for information concerning debt cancellation and debt suspension agreements.

With regard to the “clear and conspicuous” proposal, we strongly support the goal of providing understandable and noticeable disclosures to consumers. However, we also believe that the current regulatory standards are functioning appropriately, and that attempting to use the Regulation P model as a one-size-fits-all prescription for each of the diverse regulatory requirements at issue, and each of the distinct types of documents affected, would have serious negative consequences for both creditors and consumers.

Moreover, the proposal would impose enormous costs and difficulties. To use one Citigroup business as an example, full implementation of the proposal would require wholesale changes in one of our most important communications with our credit card customers — the monthly credit card billing statement — every word of which is carefully drafted in conjunction with legal, business, and marketing staff, and the overall layout and design of which is extensively tested with focus groups. On the basis of careful estimates of the cost of implementing just a portion of the proposal (the font, margin and spacing requirements) for two documents (the monthly credit card statement and the credit card account agreement) we believe that it would cost us more than \$185,000,000 per year. This partial implementation would more than double the length of the average credit card statement and triple the length of the average credit card agreement. We have not begun to estimate the cost impact on our many other lines of business that would also be affected by the proposal.

We therefore urge the Board to withdraw its proposal for reconsideration. To the extent the Board has concerns about the adequacy of any particular types of disclosures required under Regulations B, DD, E, M, and Z, the Board should consider regulatory action appropriately targeted at those specific disclosures. If there are concerns with respect to disclosures by particular institutions, they can best be addressed through the examination and compliance process.

With regard to the other two matters, we believe that the proposed interpretation of “amount” should be made more flexible. On debt cancellation and suspension agreements, we urge the Board to adopt a broader conceptual definition of debt cancellation/debt suspension and to amend 12 C.F.R. § 226.9(f) to authorize conversions between credit insurance, debt cancellation, and debt suspension coverage for all types of credit.

I. “CLEAR AND CONSPICUOUS” DISCLOSURES

For a number of reasons we believe that the “clear and conspicuous” proposal, although well intentioned, is not workable on a practical level. In Section A below we summarize general reasons why this is so. We later provide, in Sections B and C, additional comments about particular subparts of the proposal.

A. As a general matter, inserting the proposed “clear and conspicuous” prescriptions into Regulations B, DD, E, M, and Z would impose unwarranted new regulatory burdens and litigation risk on financial institutions without commensurate benefits to consumers

Most of the prescriptions that the Board proposes to add to Regulations B, DD, E, M, and Z were developed in 2000 to apply to privacy notices required by Regulation P.¹ The proposal requires that all disclosures mandated by the five regulations must be both “reasonably understandable” and “designed to call attention to the nature and significance of the information.”² It then enumerates eleven more specific prescriptions divided among these two headings, such as using short sentences, avoiding double negatives, avoiding legal and technical terms, adopting certain type sizes, using headings, and using special formatting to call attention to required disclosures. We discuss seven general concerns.

The Regulation P prescriptions were not developed for the types of disclosure documents covered by Regulations B, DD, E, M, and Z. Regulation P privacy notices are

¹ See 65 Fed. Reg. 35,126 (June 1, 2000) (promulgating standards for privacy notices required under Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 *et seq.*).

² 68 Fed. Reg. 68,786, 68,786-87 (Dec. 10, 2003); 68 Fed. Reg. 68,788, 68,789 (Dec. 10, 2003); 68 Fed. Reg. 68,791, 68,792 (Dec. 10, 2003); 68 Fed. Reg. 68,793, 68,794 (Dec. 10, 2003); 68 Fed. Reg. 68,799, 68,800 (Dec. 10, 2003).

stand-alone narrative documents, addressing an everyday subject matter and employing concrete concepts that are familiar to most consumers. Privacy notices are principally informational; they are not contractual or financial in nature. Loan and lease agreements, credit applications, deposit contracts, and other documents that are covered by the Board's new proposals, however, are materially different. They are often longer and more complex; they deal with abstract and complicated issues (including financial computational matters); they establish contractual terms for which detail and technical precision are paramount; and they integrate "disclosure" items with contractual terms and requirements.

The Board has not addressed the serious difficulties involved in applying the new prescriptions to many types of disclosure documents covered by Regulations B, DD, E, M, and Z. The new prescriptions seem to envision that deposit contracts, credit card agreements, disclosures in auto leases and closed-end loan forms, account statements, ATM receipts, and other documents would now require "wide margins and ample line spacing" comparable to privacy notices, and 11- or 12-point type comparable to typical Schumer Boxes. Such changes would vastly increase the bulk and cost of these documents. In addition, the prescription to highlight regulatory disclosure items compared to other terms would obscure and confuse important contractual and functional information. And the prescription to eliminate "legal . . . terminology" is at cross-purposes with the safety-and-soundness interests in establishing precise contractual obligations. The explanatory material accompanying the Board's proposal does not reflect any consideration of these concerns.

The Board's proposal is self-contradictory and ambiguous as to the scope of the new prescriptions. Although the new prescriptions are described as "examples" in the proposed Board Commentary, the standards themselves are stated in categorical terms—e.g., "use . . . active voice whenever possible"; "avoid legal . . . terminology whenever possible"—and linked by an "and."³ Any ambiguity as to whether the standards are mandatory and cumulative is unacceptable because, unlike Regulation P's administrative enforcement scheme,⁴ financial institutions are subject to class actions and substantial civil liability for violations of Regulation B, E, M, and Z disclosure requirements.

The risk of unwarranted class action claims resulting from implementation of the proposals is very substantial. Even a purely "technical" failure to comply with disclosure requirements under Regulation Z can subject an institution to class action claims for

³ See also *id.* at 68,787, 68,789, 68,792, 68,794, 68,800 (stating that "[t]he proposal does not add special format requirements to the regulation where none currently exist," without acknowledging that it would require for the first time that all disclosures call attention to the nature and significance of the information and that it uses prescriptive language to describe the formatting standards in the Commentary).

⁴ 15 U.S.C. § 6805. Even as to Regulation P, the Board has acknowledged that it needs to change the "format" and "language used in privacy notices." 68 Fed. Reg. 75,164, 75,166 (Dec. 30, 2003).

\$500,000 statutory damages, without any showing of adverse consumer impact.⁵ Under the proposals, every financial institution will be at risk of such suits by class action plaintiffs asserting, for example, that there is an instance in their credit card agreements' description of periodic finance charge calculations where the institution could have used a shorter sentence and therefore violated the prescription to "use short explanatory sentences or bullet lists whenever possible." Judges and juries could conclude that if the Board explicitly specified short sentences "whenever possible," TILA is violated even if a more comprehensive sentence would provide additional important information to the Consumer. And even those financial institutions that prevail against such claims will face substantial costs to defend them.

The proposal would impose substantial burdens on institutions to revise existing disclosure documentation even when it is already adequate. In interpreting prior Board mandates that disclosures be in "reasonably understandable form," courts have recognized that "what is reasonable depends on the surrounding circumstances" and "the nature of the matter discussed."⁶ But the Board's proposal, because it prescribes new affirmative disclosure standards and particular techniques of expression in regulations subject to class action liability, will greatly interfere with institutions' good faith judgments and innovations concerning disclosure communications. Instead, financial institutions will be under intense pressure to revamp existing disclosures—including disclosures that already meet reasonable standards—to mechanically invoke the specific prescriptions set forth in the Board's proposal. There is no indication that the Board has taken into account the extent of this regulatory burden, and weighed it against any measure of expected benefit.

The proposal lacks model forms and safe harbors that are necessary to minimize unwarranted liability. In many cases it would be impossible for a financial institution to be sure—or to prove in court—that it had conformed to the Board's proposed prescriptions. For example, the proposed rule mandates that an institution should "avoid legal . . . terminology whenever possible," but provides no safe harbor indicating when it is permissible to use a legal term to express a legal relationship. There are also no model forms or guidelines for "wide margins," or for any of the graphical requirements ("shading," "sidebars") that are to be used to call attention to disclosures. There are no model forms for how to use "concrete, everyday words" in "short explanatory sentences" without "legal . . . terminology" for describing complex loan obligations. Because it lacks model forms or other safe harbors for any of the types of documents and disclosures

⁵ See, e.g., *Purtil v. Eldridge Auto Sales, Inc.*, 91 F.3d 797, 801 (6th Cir. 1996) (concluding that "once a court finds a violation of the TILA, no matter how technical, the court has no discretion as to the imposition of civil liability").

⁶ *Applebaum v. Nissan Motor Acceptance Corp.*, 226 F.3d 214, 220 & n.6 (3d Cir. 2000) (holding that the requirement that disclosures be in a "reasonably understandable form" does not require that complex calculations be within the understanding of the average consumer).

covered, the proposal imposes new open-ended risks and obligations for institutions, and inappropriately denies them any concrete guidance to minimize those risks and burdens.⁷

*The Board should reconsider its proposal in light of the lessons of the Truth in Lending Simplification and Reform Act of 1980.*⁸ Congress adopted the Simplification Act because it concluded that TILA enforcement had become hypertechnical and that “many creditors have sincerely tried to comply with the act but, due to its increasing complexity and frequent changes, have nonetheless found themselves in violation and subject to litigation.” The Simplification Act therefore restricted civil liability for statutory penalties in hopes of “eliminat[ing] litigation which is based on violations of a purely technical nature,” and directed the Board to develop model forms that would showcase best practices and provide creditors with safe harbors.” The Board responded with a rulemaking designed to eliminate any “burdens not justified by substantial consumer benefits” in Regulation Z, acknowledging that the Simplification Act “dictates a heightened awareness” of cost-benefit concerns.” As part of that rulemaking, the Board dropped many of the rigid type size and formatting requirements it had promulgated in the original version of Regulation Z.¹²

We urge the Board to apply a similarly pragmatic analysis of cost-benefit concerns to its new proposed prescriptions. In our view, this should lead the Board to withdraw the proposal as it currently stands. To the extent that the Board believes that there are broad industry problems with respect to the clarity of any particular types of disclosures, it can target regulatory attention to those particular disclosure matters. If

⁷ Safe harbors and model forms were far less important under Regulation P, of course, since it is enforced through the regulatory process. The Board and other banking regulators discounted complaints that the Regulation P criteria were too open-ended because the rule was intended to leave each financial institution with “the flexibility to decide for itself how best to comply” with regulatory requirements. 65 Fed. Reg. at 35,165; 65 Fed. Reg. 8770,8771 (Feb. 22,2000). Under the proposed rule, however, judges and juries would have to apply what the Board has acknowledged are “imprecise” standards in widely different contexts. *Id.*

⁸ Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, tit. VI, 94 Stat. 132, 168.

⁹ S. Rep. No. 96-73, at 2 (1979).

¹⁰ *Id.* at 7

¹¹ 45 Fed. Reg. 80,648, 80,649 (Dec. 5, 1980).

¹² The Senate Report stated that the Simplification Act’s restriction of TILA civil liability was intended to ensure that “no statutory penalties would attach to less important requirements such as type size, the sequence of disclosures, and identification of purchases and payments” for open-end credit agreements. S. Rep. No. 96-73, at 7. In its subsequent rulemaking, the Board scrapped many formatting requirements, concluding that creditors needed “more flexibility in designing their forms to convey necessary information more effectively,” 45 Fed. Reg. 29,702, 29,703 (May 5, 1980), and that the broader “clear and conspicuous” standard was sufficient. 46 Fed. Reg. 20,848, 20,856-57, 20,871-73 (Apr. 7, 1981).

there are concerns respecting particular institutions, they should appropriately be dealt with through the examination and compliance process. In the absence of any empirical evaluation of (a) the ineffectiveness of current disclosures, (b) reasonable feasibility and cost of particular changes, and (c) the efficacy of the new prescriptions, however, a vague notion that existing disclosures “aren’t good enough” does not justify imposing such a radical change in regulatory standards.

B. The proposed “designed to call attention” prescriptions should be withdrawn

The proposal would make two changes to add “designed to call attention” prescriptions. First, it would add to each of Regulations B, DD, E, M, and Z a new definition providing that “Clear and conspicuous means that a disclosure . . . is designed to call attention to the nature and significance of the information in the disclosure.” Second, it would add to the Commentary a list of five prescriptions for compliance with the new “designed to call attention” regulation. In our view, both the change to the Regulation and the elaboration in the Commentary should be withdrawn. We address each in turn.

1. Proposed changes to Regulations B, DD, E, M, and Z to provide that “[c]lear and conspicuous means that a disclosure . . . is designed to call attention to the nature and significance of the information in the disclosure.”

Defining “clear and conspicuous” to mean that disclosure must be “designed to call attention to the nature and significance of the information in the disclosure”¹³ is entirely new; the requirement does not currently exist as part of the *concept* of “clear and conspicuous” in any of the regulations to be amended. The proposal should be withdrawn because it will impose unwarranted new burdens and risks on institutions.

The proposed “call attention” obligation is a fundamental departure from existing legal standards. Regulation Z provides a clear example. The Commentary to the rule currently defines “clear and conspicuous” to mean that disclosures must be in “reasonably understandable form”¹⁴; it does *not* require that disclosures be “designed to call attention to the nature and significance of the information in the disclosure.” On the contrary, where various sections of Regulation Z require that certain limited information be specially set forth in more prominent type, or specially segregated, these special requirements are established *apart from and in addition to* the “clear and conspicuous”

¹³ E.g., Proposed 12 C.F.R. § 226.2(a)(27).

¹⁴ 12 C.F.R. pt. 226 supp. I, cmt. 226.5(a)(1)-1; *see also* Consumer Compliance Handbook, Regulation Z, 1-156 (Oct. 1996) (clear and conspicuous disclosures “should not be buried in fine print and should be visible without undue searching. They must be phrased to communicate information clearly and effectively.”).

requirement.¹⁵ Indeed, the existing Commentary explicitly emphasizes that the “clear and conspicuous” standard generally “does *not* require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size.”¹⁶ The proposal to change this standard to indicate that “[g]enerally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard”¹⁷ is a fundamental change in disclosure policy. Such a change would result in extensive and costly changes to existing credit card agreements and similar documents subject to Regulation Z, which often integrate required regulatory disclosures with other important information whose inclusion is not mandated by law (e.g., credit limits, minimum due calculations, certain transactional data). The proposal would similarly affect disclosures under the other regulations that the Board proposes to change.

The proposed requirement that regulatory disclosures call attention “to the . . . significance of the information in the disclosure” is a new and substantial disclosure obligation. Regulation Z is again exemplary. Under that regulation as it currently stands, lenders are generally required to disclose certain objective information about accounts and transactions. They are generally not, however, required to address its “significance.”¹⁸ Providing “significance” information may be especially difficult in connection with receipts, account statements, and similar documents, which today disclose detailed transactional, timing, and other required information, but are not required to provide detailed explanations of its potential impact. We are concerned, for example, that potential challengers may contend that, in order to “call attention to the significance” of the disclosures they contain, receipts and account statements will henceforth have to recapitulate contractual information that is presently conveyed in account agreements.¹⁹ Although the proposal’s “significance” obligation will apply to every type of disclosure required under all five subject regulations and may have a substantial impact on the contents of those disclosures, the Board’s proposal includes no explanation of what additional information it intends institutions to provide.

¹⁵ See, e.g., 12 C.F.R. § 226.5(a)(2) (“The terms *finance charge* and *annual percentage rate*, when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure.”).

¹⁶ 12 C.F.R. pt. 226 supp. I, cmt. 226.5(a)(1)-1 (emphasis added).

¹⁷ 68 Fed. Reg. at 68,787, 68,789, 68,794, 68,800; cf. *id.* at 68,792 (omitting this statement from the preamble discussing Regulation M, which already requires certain disclosures to be segregated under 12 C.F.R. § 213.3(a)(2)).

¹⁸ Where “significance” information is to be provided, it is set forth as a special requirement and not required as part of the “clear and conspicuous” standard. See, e.g., 12 C.F.R. § 226.6 n.12 (requiring disclosure of “the effect(s) of an increase” in a variable rate).

¹⁹ For example, statements show both the “post” date and the “sale” date. For accrual of finance charges, the “post” date is significant for balance transfers and the “sale” date is significant for purchases.

Adding the “call attention” and “significance” requirements to regulatory disclosures other than Regulation P privacy notices will impose substantial new burdens and risks on institutions. The Board may have considered that applying a “call attention” requirement to privacy notices did not impose significant additional risks or burdens on institutions because privacy notices were new, relatively simple and self-contained, and not subject to challenge through private class action suits for damages.²⁰ But adding these new obligations to the various disclosure documents covered by the regulations that the Board now proposes to amend will impose substantial affirmative burdens on institutions to revise their entire range of disclosure documents to add additional information and new formats. The costs of such revisions will be substantial. Moreover, the new “call attention to the significance” requirement is especially ambiguous, and will expose institutions to significant risk of legal challenges. The Board’s proposal does not identify any important consumer need warranting the imposition of these risks and burdens.

2. Proposed Commentary changes to implement the “designed to call attention” standard.

The proposal prescribes five criteria under the “designed to call attention” heading. We discuss two problems.

Type size and related matters. The Board’s prescriptions would apply to all disclosures under Regulations B, DD, E, M, and Z the same “type size” criteria that are now employed solely in the Schumer Box provisions of Regulation Z.²¹ An additional prescription covers margins and line spacing.²²

Extending the Schumer Box type size and Regulation P formatting prescriptions would impose high costs on institutions that the Board does not appear to have considered. The proposal does not literally dictate that an institution use a specific type size for disclosures under Regulations B, DD, E, M, and Z, but any institution that fails to make all required disclosures in the same size type that it uses for its Schumer Box will

²⁰ The Board has also incorporated some Regulation P standards into rules governing insurance disclosures, but those too apply only to a new, discrete set of disclosures about a single topic. See 65 Fed. Reg. 75,822, 75,828 (Dec. 4, 2000) (promulgating 12 C.F.R. § 208.84). The insurance regulations are subject to an agency-run grievance process rather than to class action lawsuits for statutory damages, 12 U.S.C. § 1831x(f), and the Board’s guidance indicates that segregation is not required, does not prescribe particular type sizes, and omits the problematic Regulation P criteria defining “reasonably understandable.”

²¹ E.g., Proposed 12 C.F.R. pt. 226 supp. I, cmt. 226.2(a)(27)-2(ii). Although the proposed Commentary does not explicitly mandate a specific type size, it states that “[d]isclosures in 12-point type generally meet [the easy-to-read] standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard.” *Id.*; cf. 12 C.F.R. pt. 226 supp. I, cmt. 226.5a(a)(2)-1 (applying these standards to disclosures in credit card solicitations and applications).

²² E.g., Proposed 12 C.F.R. pt. 226 supp. I, cmt. 226.2(a)(27)-2(iii)

be susceptible to challenge in class actions and other contexts. Enlarging other disclosures to Schumer Box size will be expensive, however, and will increase the cost of credit and other bank services. Citibank and other responsible lenders have followed the Schumer Box criteria by putting those disclosures in 11- or 12-point type (larger even than the marketing text in credit card solicitations). Moreover, in addition to the Schumer Box font size prescriptions, the proposal contains other formatting provisions. We have determined that making the font, margin, and spacing changes to credit card statements would more than double the average number of pages on these documents (which we send monthly to more than 60,000,000 accounts). Our credit card agreement would triple in length.

The increased volume of these documents would not only raise paper and postage costs very substantially, but would also require additional machinery, additional space for the machinery, and additional employees to operate the machinery, among other things. Based on our detailed estimating process, we have calculated that the increase in our costs in order to make these changes—for the card agreement and monthly statement alone—would be approximately \$185,000,000 per year.²³ Applying these same standards to our other credit card related disclosures, including disclosures in applications, notices, and marketing communications, would further increase the implementation costs. We have not begun to estimate the cost impact on our many other lines of business that would also be affected by the proposal. And, of course, the industry-wide costs across all consumer financial services covered by the proposal would be many times greater still. The Board's proposal has not identified any specific benefit that consumers will receive or any specific problem that will be remedied by implementing these changes, such that the enormous expenditure would be justified. Consumers would nonetheless pay for these changes, either through higher finance charges or restricted access to credit. In our view, it is inappropriate for the Board to impose such radical changes without a thorough analysis and opportunity for comment on it. In particular, even if some generalized benefits to consumers were presumed to flow from the Board's proposal, we are skeptical that such benefits could outweigh the very substantial costs, and believe that the Board should engage in an explicit cost-benefit analysis if it wishes to proceed with the proposal.

Use of boldface, highlighting, and other graphical techniques to highlight regulatory disclosures. The proposal prescribes using “boldface or italics for key words” and, in documents that combine regulatory disclosures with other information, using “distinctive type size, style, and graphic devices such as shading or sidebars, to call attention to the disclosures.”²⁴

²³ Our estimates include the capital costs on an annualized depreciation basis, thus these costs would be ongoing. Upon request, we would be happy to provide more detailed information on a confidential basis.

²⁴ E.g., Proposed 12 C.F.R. pt. 226 supp. I, cmt. 226.2(a)(27)-2(iv), (v).

These graphical prescriptions are unnecessary and will add confusion to documents that combine regulatory disclosures with other information. Documents that contain disclosures required by Regulations B, DD, E, M, and Z often combine regulatory disclosures with other information, organized functionally. We urge the Board to review a typical credit card agreement, or other similar document, as an example. Such documents integrate disclosures that are required by Regulation Z together with non-regulatory disclosures, statements of contractual rights and obligations, and operational information about the account. The information is organized functionally, with topical headings. Prescribing that institutions distinguish or segregate the regulatory disclosures from other important information by graphical devices can interfere with the logical presentation of information, obscure important material, and make the documents more confusing.

In the case of our credit card billing statements, we have invested years of research and effort into the design of these documents because they are our primary monthly communication with our customers and must therefore effectively convey detailed transactional information, various news and program announcements, and recurring disclosures. The Board's proposal would require a dramatic restructuring of these statements to emphasize every single TILA disclosure over equally important information such as the size of customer's credit line and the minimum monthly payment, information that is vitally important to consumers though not mandated by statute. The Board has articulated no justification for interfering so significantly with these vital customer communications. On a more general level, applying shading, highlighting, bolding, or similar techniques to the regulatory disclosures spotted throughout account agreements and other assorted documents are more likely to confuse than to enlighten consumers.²⁵

C. The proposed “reasonably understandable” prescriptions should be withdrawn

The proposal would add a definition of “clear and conspicuous” to Regulations B, DD, E, M, and Z providing that “Clear and conspicuous means that a disclosure is reasonably understandable” It would then add to the Commentary for each regulation a list of six prescriptions for compliance with the new “reasonably understandable” requirement. The general “reasonably understandable” standard is not a change in existing concepts, and raises no concerns. However, we address two problems relating to the specific prescriptions in the proposed Commentary.

The proposals enunciate categorical prescriptions that cannot reasonably be met. Each of the “reasonably understandable” prescriptions is stated in categorical terms that

²⁵ For example, the section of our card agreement concerning cash advances describes the types of transactions that are considered cash advances, the cash advance fee, and the fee an ATM owner may impose. Only the first two of these items are required disclosures, but using graphical devices to distinguish them from the third would not make the agreement more useful or easier to understand.

go far beyond what is required to make disclosures clear and conspicuous. For example, institutions must “use short explanatory sentences or bullet lists *whenever possible*,” “use definite, concrete, everyday words and active voice *whenever possible*,” and “avoid legal and highly technical business terminology *whenever possible*.”²⁶ These prescriptions may represent general rules of good expository writing, but slavish adherence to such prescriptions *whenever possible* is not in fact necessary in order for disclosures to be “reasonably understandable.” Even the Board’s mandated disclosures and model forms do not follow these prescriptions *whenever possible*. For example, the first sentence of the Board’s required Equal Credit Opportunity Act notice states, “The federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant’s income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.”²⁷ That sentence, which arguably violates all three of the prescriptions quoted above, is nevertheless quite understandable — and there is no reason to preclude its use.

There are other examples of long sentences, passive voice, and technical or legal terms in the Board’s model or mandatory forms. In such cases the Board has recognized that considerations related to the particular purposes of the particular disclosure should control how the information at issue ought to be expressed. For example, the Board’s Schumer Box provisions specifically authorize lenders to use short-hand terms, even though they are technical in nature, in order to be concise in that context.²⁸ It is unfair and inappropriate for the Board’s proposal to enunciate categorical prescriptions as the determinant of “reasonably understandable.”²⁹

The Board’s prescriptions would inappropriately subject institutions to increased litigation risk and uncertainty. The “reasonably understandable” prescriptions threaten institutions with increased risk of litigation not merely because they are categorical in nature, but also because they are imprecise about when, and to what extent, an institution may properly deviate from their mandates. The proposed new prescriptions have quite a different tenor than, for example, the current Regulation M Commentary on disclosure of lease termination calculations, which indicates that a lessor “should attempt to provide consumers with clear and understandable descriptions of [their] early termination charges. Descriptions that are full, accurate, and not intended to be misleading will

²⁶ E.g., Proposed 12 C.F.R. pt. 226 supp. I, cmt. 226.2(a)(27)-1(ii), (iii), (v) (emphasis added).

²⁷ 12 C.F.R. § 202.9(b)(1).

²⁸ 54 Fed. Reg. 13,855, 13,857, 13,859 (Apr. 6, 1989); *see also* 65 Fed. Reg. at 33,500 (prohibiting financial institutions from putting certain explanatory language in the Schumer Box to reduce clutter).

²⁹ *See generally Applebaum v. Nissan Motor Acceptance Corp.*, 226 F.3d 214, 220 & n.6 (3d Cir. 2000) (what is “reasonably understandable” will depend “on the surrounding circumstances” and “the nature of the matter discussed”).

comply [with the clear and conspicuous standard], even if the descriptions are complex.”³⁰ A lessor that complies with this existing standard will risk being second-guessed by a class action plaintiff who cites the new prescriptions as allowing some complexity when necessary, but requiring concision and non-technicality *whenever* possible.

D. Conclusion

This proposal should be withdrawn. Fully implementing the proposal would increase our costs by well more than \$185,000,000 a year for our credit card business alone. Yet there is no showing that it will provide commensurate benefits for consumers. Indeed, a preliminary assessment of how to implement this proposal quickly identifies instances when the segregation, significance, and graphical techniques would make communications *less* useful and understandable. Moreover, the proposal would expose institutions to great litigation risk. Litigation would also impose substantial costs on financial institutions, although precise dollar figures are difficult to estimate.

11. INTERPRETATION OF “AMOUNT” IN REGULATION Z

With regard to the Board’s proposed rule of construction that the word “amount” refers to a numerical amount any time it is used to describe a disclosure requirement under Regulation Z,³¹ we agree that disclosures should make costs readily determinable to consumers.³² However, we believe that the proposed rule of construction is unnecessarily rigid because there may be fee formulations that cannot be expressed as a single numerical amount without at least some explanatory text. At the very least, we strongly urge the Board to clarify its proposed Regulation and Commentary to indicate that percentages as well as numerical amounts satisfy the new standard.

111. DEBT CANCELLATION AND DEBT SUSPENSION AGREEMENTS

We interpret your request for information regarding debt cancellation and debt suspension products as the functional equivalent of an advance notice of proposed rulemaking, even though it was contained in a proposed rule announcement.³³ While we agree that a rulemaking is warranted, we strongly urge the Board to allow for additional comment on specific proposals before finalizing new standards.

³⁰ 12 C.F.R. pt. 213 supp. I, cmt. 213.4(g)-1

³¹ Proposed 12 C.F.R. pt. 226, supp. I, cmt. 226.2(b)(5)-2.

³² Cf. 12 C.F.R. pt. 226, supp. I, cnits. 24(c)(1)-1, -3, -4 (trigger term disclosures are required even if the dollar amount or payment amount is not stated explicitly but can be readily determined from the advertisement).

³³ 68 Fed. Reg. 68,793, 68,795-96 (Dec. 10, 2003).

We have separately addressed the Board's questions below. Because debt suspension is a subcategory of debt cancellation—the difference is that the customer's obligations are “frozen” upon the occurrence of a triggering event such as disability rather than being waived entirely, so that the deferred payments resume after the event ends—we generally refer to the two collectively as “debt cancellation or suspension.” We believe that the two products should be treated identically for all regulatory purposes, as the Office of the Comptroller of the Currency (OCC) has done in its debt cancellation/suspension regulations.³⁴

Our remarks do not address guaranteed automobile protection (GAP) coverage, which raises unique issues both because it is subject to insurance regulation in some states and because lenders have limited control over the car dealers who arrange the contracts. We note that the OCC has suspended the operation of many of its debt cancellation/suspension regulations with regard to GAP,³⁵ and believe that the Board should be equally cautious about imposing any new disclosure requirements for GAP products.

- **What are the similarities and differences among credit insurance, debt cancellation coverage, and debt suspension coverage, in the case of both closed-end and open-end credit?**

The products function in a similar way, from a consumer's perspective, in that they provide contractual relief from an obligation to a lender upon the occurrence of a specified event. The form and mechanics, however, differ significantly. The most fundamental difference is that credit insurance involves indemnification by a third party who agrees to pay money to the creditor upon the occurrence of a triggering event, so that coverage is subject to the risk that the insurer may become insolvent and thus unable to fulfill its obligations. Debt cancellation or suspension products, on the other hand, involve a contractual promise that the borrower's obligation to the creditor will be cancelled or suspended upon such an occurrence. Coverage can thus be provided even if the creditor were to become insolvent.

A second major difference between the two types of products is that while debt cancellation/suspension programs can be designed to match the benefits offered under particular credit insurance policies, the products can also be designed to include coverage that is not permitted by state statutes governing credit insurance. Thus, because debt cancellation or suspension products are generally subject to uniform federal regulation,³⁶

³⁴ 12 C.F.R. pt. 37

³⁵ 68 Fed. Reg. 35,283 (June 13, 2003).

³⁶ 12 C.F.R. § 37.1(c); 12 U.S.C. §§ 7.4008(d), 34.4(a); *First Nat'l Bank of E. Ark. v. Taylor*, 907 F.2d 775 (8th Cir. 1990); see also Office of Thrift Supervision, Op. Chief Counsel at 3 & n.6 (Dec. 18, 1995) (citing *Taylor* for the proposition that “differences between debt cancellation and credit insurance . . . minimize the

banks and thrifts can provide benefits that are not found in credit insurance policies and can adapt their products to meet the needs of various market segments more quickly and easily than they can with credit insurance products. For instance, we changed one of our core products soon after September 11 to offer benefits for customers affected by national disasters and/or calls to active duty in a military reserve. Moreover, nationally uniform treatment means that coverage and price do not vary from state to state.

The fact that the underlying debt is closed-end or open-end generally makes no difference in the operation of debt cancellation/suspension or credit insurance products, although the benefits may be structured differently to reflect the differing payment obligations for the two types of credit.

- **With what types of closed-end and open-end credit are debt cancellation and debt suspension products sold? Do creditors typically package multiple types of coverage, or sell them separately? Do creditors typically sell the products at, or after, consummation/account opening?**

Customers purchase these products in connection with both open-end credit (i.e., credit card accounts) and closed-end loans (i.e., retail installment, motor vehicle, and real estate). Debt cancellation/suspension protection is valuable with all types of lending.

We are constantly testing different packages of coverage types, lengths, and benefits to determine which are the most responsive to consumers' needs. For instance, we have expanded some of our products beyond traditional coverage for job loss, disability, death, and family leave to cover additional hardships (hospitalization, divorce, call to military reserve active duty, etc.) and life events causing increased expenses (marriage, move or relocation, starting college or graduate school, etc.). We do not envision, however, that such non-standard protections will be offered as standalone programs, rather than as supplements to the traditional coverage. Because we need flexibility to determine which products are appealing to a critical mass of customers (and thus commercially viable over the long term), we would oppose any changes that would require disclosures on a benefit-by-benefit basis.

Consummation and account opening are natural points for sales of debt cancellation/suspension products, but many customers prefer making their decisions at a later date.

- **What disclosures are made with the sale of a product or upon conversion from one product to another, whether required by TILA or other laws? How are monthly or other periodic fees disclosed?**

likelihood that a state insurance regulator would have a basis to examine the books and records of a savings association offering debt cancellation”).

Citigroup's various member institutions comply with applicable laws with regard to disclosures, including disclosure of periodic fees. For example, in addition to applicable TILA requirements, Citibank (South Dakota), N.A. provides the disclosures required by the OCC's Debt Cancellation and Debt Suspension Agreements regulations.³⁷ Citibank FSB also typically complies with the OCC's rules as a prudential matter.

- **Is there a need for guidance concerning the applicability of 12 C.F.R. §§ 226.4(b)(7), (10) and 226.4(d)(1), (3) to certain types of coverage now available? Are the required disclosures adequate for all types of products subject to § 4(d)(1), (3)?**

There is a great need for clarification and revision of section 226.4. We urge the Board to adopt the OCC's definition of debt cancellation and debt suspension products as loan terms or contractual arrangements that are triggered "upon the occurrence of a specified event,"³⁸ without limitation as to which events are permissible subjects. This broader conceptual definition would clarify that coverage for various life events falls within the scope of the regulation and foster greater benefit innovations for consumers.

We also urge the Board to clarify Comment 4(b)(10) to indicate, as it has already done in Comment 4(b)(7) & (8)-2 with regard to credit insurance, that fees for debt cancellation/suspension products sold after consummation or account opening are excluded from finance charge calculations because they are not "written in connection with" the transaction.

The required disclosures are adequate; the problem is the need for elaboration concerning what types of products are encompassed within section 226.4(d)(3).

- **Should the Board interpret or amend 12 C.F.R. § 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements? If so, is there a need to address conversions other than for credit cards?**

As the Board has recognized in the home equity context, debt protection is a concrete benefit to consumers.³⁹ Where consumers have already affirmatively elected to purchase such a benefit—whether in the form of credit insurance or debt cancellation/suspension—the default rule should be that the protection stays in place during a change in providers unless and until consumers exercise their rights to terminate

³⁷ 12 C.F.R. pt. 37

³⁸ *Id.* § 37.2(f), (g).

³⁹ See 12 C.F.R. pt. 226 supp. I, cmt. 226.5b(f)(3)-1 (permitting home equity creditors to pass on increases in credit insurance premiums "since the insurance is voluntary and provides a benefit to the consumer").

it after notice.⁴⁰ Accordingly, section 226.9(f) should be clarified to indicate that credit card issuers may convert (a) from one credit insurance provider to another, (b) from one debt cancellation/suspension program to another, and (c) from credit insurance to debt cancellation/suspension or vice versa, as long as they provide notice and opt out rights in accordance with regulatory and statutory requirements.

This change would assist financial institutions that have acquired another creditor or a loan portfolio from another lender and have a need to convert those loans to the same credit insurance or debt cancellation/suspension programs that they use on their existing portfolios. At the same time, customers' interests would be adequately protected not only by the opt-out rights provided under section 226.9(f), but also by OCC rules prohibiting the use of terms in debt cancellation/suspension contracts that would authorize unilateral price increases or reductions in coverage without providing appropriate cancellation opportunities, 12 C.F.R. § 7.3(c). Indeed, our debt cancellation/suspension products give customers the right to cancel at any time.

Rather than the current disclosure, we believe it would be more useful for consumers if the Board required a summary of the new coverage. Requiring a summary of the new coverage regardless of the nature of the change would also facilitate compliance by permitting uniform disclosures and eliminating interpretive issues surrounding the applicability of the various requirements. We believe this summary should include: (1) the type of coverage provided (*e.g.*, debt cancellation or debt suspension); (2) the fact that the contract or agreement is optional and can be cancelled; (3) the unit cost or nature of the fee or fees associated with the new product; (4) the types of events covered by the new product; and (5) the basic eligibility requirements and any applicable conditions or exclusions. Consistent with the current interpretation under section 226.9(f), the Board should permit a creditor to provide this disclosure in conjunction with or on a periodic statement.

- **If the Board interprets or amends 12 C.F.R. § 226.9(f) to address conversions from credit insurance to debt cancellation or debt suspension agreements, what additional guidance would national banks need, if any, to comply with the Board's new rule and with OCC regulations requiring a customer's affirmative election of debt cancellation and suspension agreements?**

No additional guidance from the Board is needed as long as it clarifies that section 226.9(f) permits conversions (a) from one credit insurance provider to another, (b) from one debt cancellation/suspension program to another, and (c) from credit insurance to debt cancellation/debt suspension or vice versa, as long as creditors comply with notice and opt-out requirements. As discussed above, because credit insurance and debt cancellation/suspension products are functionally similar from consumers' perspective,

⁴⁰ See 15 U.S.C. § 1637(g); H.R. Conf. Rep. 100-1069, at 22-23 (1988) (rejecting a Senate plan to require new affirmative elections to consent to certain credit insurance provider conversions and requiring instead that consumers receive notices and opt-out rights).

we believe that no additional affirmative election is required after a customer initially decides to purchase debt protection. Even if there were additional interpretation concerns under the OCC's regulation, we do not believe that a TILA rulemaking would be the correct place to resolve them.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Carl V. Howard", with a stylized flourish at the end.

Carl V. Howard
General Counsel – Bank Regulatory